

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16541 of 2009

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Ali Imam, S/O Late Saiyal Abdul Waheed, R/O Akbar House, Dariyapur Road, Sabzibagh, P.S- Pirbahore, Distt- Patna

.... Petitioner

Versus

1. The Govt. of Bihar through the Commissioner-cum-Secretary, Human Resources Development Department, Patna
2. The Director, Research and Training, Human Resources Development Department, Govt. of Bihar, Patna
3. The Director, Administration-cum-Deputy Secretary, Human Resources Development Department, Govt. of Bihar, Patna
4. The Commissioner-cum-Secretary, Department of Finance, Govt. of Bihar, Patna
5. The Accountant General of Bihar, Patna
6. The Deputy Secretary, Human Resources Development Department, Govt. of Bihar, Patna-1

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajendra Prasad Singh, Sr. Advocate
Mr. Mukesh Kumar Singh, Advocate

For the State : Mr. Rajiv Roy, G.P.5 with Mr. Suresh Kumar, AC to G.P.5

For the Accountant General: Mr. Vivekanand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

17 11.12.2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner has filed the application for quashing the letter dated 9.6.2009 issued by the Director, Administration-cum-Deputy Secretary, Human Resources Development Department, Government of Bihar by which the claim of the petitioner for pension and other pensionary benefits has been rejected and for further consequential direction.

The admitted facts of the case are that the petitioner was

working as Assistant Director (Training) from August, 1982 in Deepayatan, which though receiving funds from the State Government as well as the Central Government, was otherwise a voluntary institution. An advertisement was published by the Human Resources Development Department, Government of Bihar on 12.9.1992 inviting applications in prescribed proforma from eligible candidates for selection on deputation to the posts of Principals for different District Institutes of Education and Training (DIET). The pay scale prescribed for the said post was Rs.3,700-Rs.5,000/- along with other allowances as per the State Government rules and the selection was to be made on the basis of interview. The petitioner and others filed applications for the said post and after the interview, by letter dated 5.5.1993 issued by the Additional Secretary, Government of Bihar the petitioner was selected for the post of Principal, DIET, Bikram, Patna on the aforesaid pay scale for a period of three years on deputation. It was provided in the appointment letter that the appointed person would have to produce the relieving letter from the present employer and if his service was found unsatisfactory then he was to be given one month's notice and his service would be returned to his parent department. The petitioner thereafter continued to get extension from time to time and finally he retired from the said post on 31.12.2007 after attaining the age of 60 years. At the time of retirement his pay scale was Rs.12,000-16,500/- and he had got



last emolument of Rs.34,998/- per month. The petitioner applied for fixation of pension and other retirement benefits but on no action having been taken by the respondents he approached this Court by filing CWJC No. 4332 of 2009, which was disposed of by order dated 8.4.2009 of this Court with the direction to respondent No.3 to dispose of the representation filed by the petitioner, if not already disposed of, by a reasoned order within a period of two months. The petitioner thereafter filed a fresh representation on 18.4.2009 annexing the order dated 8.4.2009 and other relevant documents but by the impugned order dated 9.6.2009 the claim of the petitioner has been rejected.

Learned counsel for the petitioner submits that the case of the petitioner cannot be considered as one of deputation simplicitor as although in terms of the appointment letter dated 5.5.1993 he was appointed to the said post for three years on deputation but he was continued on the same post for more than 14 years by giving him extension from time to time and ultimately he superannuated from the said post on 31.12.2007. It is further submitted that since the petitioner had superannuated from Government post he would be entitled to pension and, that too, he was allowed to continue to the said post for such a long period of time.

In support of his stand learned counsel for the petitioner relies upon a learned Single Judge decision of the Jharkhand High



Court in W.P.(S) No. 4396 of 2005 : Ram Ayodhya vs. The State of Jharkhand and others, dated 18.10.2008 allowing the writ petition filed by one of the other appointees to the same post at Dumka having been appointed by the same letter dated 5.5.1993. It is submitted that in his case the Jharkhand High Court has allowed the writ petition directing the respondents to consider the claim of the petitioner for fixing his pension on the basis of the scale of pay last drawn by him in the post from which he retired along with all consequential benefits.

Learned counsel for the State, on the other hand, submits with reference to the counter affidavit and the supplementary counter affidavit filed on behalf of respondent Nos. 1 to 3 that a clear stand has been taken that the petitioner has been communicated by the Department that claim of pension and other pensionary benefits were not admissible to him on the ground that he was originally posted at Deepayatan , a self service Institution (Voluntary Institution) and his service was taken into by the Government of Bihar by letter dated 5.5.1993 on deputation basis. It is further submitted that the service of the petitioner being on deputation he cannot claim any pensionary benefit on account of having served on the said post even for a period of about more than 14 years and his post retiral dues would depend upon the service condition in the original institution from which he had come and in the said institution Deepayatan, pension/pensionary

benefits was not admissible. It is reiterated that the petitioner's service was only taken on deputation from his parent department and he was never absorbed in the Government service and remained on deputation till the date of his superannuation and thus he cannot claim any retiral benefit and with regard to the same he is entitled to claim from his parent employer, i.e., Deepayatan.

It is contended that the claim of the petitioner is neither governed by paragraph 18 of the Finance Department's Resolution No. 3014F dated 31.7.1980 nor the same is applicable to a non-Government servant who is on deputation to a non-cadre Government post and not a Government servant.

It is also submitted that under Rule 45(e) of the Bihar Pension Rules the petitioner is not entitled to pension as it is clearly provided that no claim to pension is admitted when a Government servant serves under an agreement which contains no stipulation regarding pension, unless the Provincial Government specifically authorize him to count service towards pension.

It is urged that on the basis of the decision in the case of Ram Ayodhya (supra), relied upon by the petitioner, the petitioner cannot claim any such benefit as the petitioner of that case was originally/basically appointed as Assistant Teacher at Saran, Chapra and he was appointed on deputation on the post of Principal in DIET, Pebia, Dumka and thus he was originally a Government servant having held a pensionary post. Hence the

decision of the Jharkhand High Court cannot apply to the case of the petitioner who was neither a Government servant prior to his deputation on the parent post nor was in any pensionary service of Government earlier.

On a consideration of the facts and circumstances of the case and submissions of learned counsel for the parties, this Court finds sufficient force in the submission of learned counsel for the State. It is evident that the petitioner was working in a non-Governmental organization and it is not in dispute that his services were not pensionable. The petitioner having applied pursuant to an advertisement for appointment on deputation to the post of Principal, DIET which did not mention that he would be treated as a Government servant or his service would be pensionable, cannot claim any such benefit unless there is any statutory rule in support of his stand. It is not denied that earlier service of the petitioner was non-pensionable as the said voluntary organization is a self service Institution having received funds from the State Government as well as the Central Government.

Moreover, the petitioner was issued appointment letter to the post of Principal, DIET for a period of three years and was put under deputation.

Although the Jharkhand High Court in Ram Ayodhya's case (supra) has held that the appointment of the petitioner therein on the post of Principal, DIET was not strictly on deputation



because the selection of the candidates was to be made on the basis of their qualifications and teaching experience and the appointment of the candidates was made only after scrutiny in accordance with the selection process and the merit list and thus the pension to the said petitioner cannot be denied to him on the basis of the scale of pay last drawn by him on the date of retirement; but in the present case the first issue is as to whether the petitioner can claim that his service is pensionable on the basis of the advertisement and the letter of appointment issued to him. There is nothing in the appointment letter to show that his service is pensionable irrespective of the fact that his service was merely on deputation to the post of Principal, DIET. Rule 45 of the Bihar Pension Rules is in the following terms :-

“45. In the following cases no claim to pension is admitted:-

- (a) When a Government servant is appointed for a limited time only, or for a specified duty, on the completion of which he is to be discharged.
- (b) When a person is employed temporarily on monthly wages without specified limit of time or duty.
- (c) When a person's whole time is not retained for public service, but he is merely paid for work done, such as Government Pleaders and Law

Officers not debarred from private practice.

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- (d) When a public servant holds some other pensionable office, he earns no pension in respect of an office of the kind mentioned in clause (c) or in respect of duties paid for a compensatory allowance.
- (e) When a Government servant serves under an agreement which contains no stipulation regarding pension, unless the Provincial Government specially authorize him to count service towards pension.”

It is evident from the said Rule that where appointment is contractual, as admittedly in the case of the petitioner, then no claim of pension is admitted by the Government unless specifically authorized by the Government. Nothing has been brought on the record by the petitioner to show that there was any order of the State Government specially authorizing him to count his service towards pension. Learned counsel for the petitioner is unable to show any statutory rule on the basis of which he can claim that his service is pensionable.

In the aforesaid circumstances, it is not open to the petitioner to claim pension merely because he had served on deputation on the aforesaid post of Principal, DIET for a period of 14 years.

Thus, on a consideration of the entire facts and circumstances, this Court does not find any merit in the claim of the petitioner. The writ application is, accordingly, dismissed.



(Ramesh Kumar Datta, J)

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